

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

November 18, 2002

At 9:33 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Callahan, Associate Justice; Hull, Associate Justice; Robie, Associate Justice; and Rios, Bailiff. Calendar called.

C038912 KOHLER v. INTERSTATE BRANDS CORPORATION

Cause called. No appearance was made on behalf of appellant. Lisa G. Mercurio, argued for respondents. Cause submitted.

At 9:40 a.m., court recessed. At 9:42 a.m., court reconvened with Blease, Acting Presiding Justice; Hull, Associate Justice; and Robie, Associate Justice.

C038629 THE PEOPLE v. BARBOSA

Cause called. Peter Kmeto, argued for appellant. Brian G. Smiley, Deputy Attorney General, argued for respondent. Cause submitted.

At 9:57 a.m., court recessed. At 10:03 a.m., court reconvened with Blease, Acting Presiding Justice; Davis, Associate Justice; and Morrison, Associate Justice.

**C038416 SOUTHGATE RECREATION AND PARK DISTRICT v. CALIFORNIA
C039249 ASSOCIATION FOR PARK AND RECREATIONAL INSURANCE.**

Cause called. James Wagoner, argued for appellant. Thomas W. Barth, argued for respondent. Cause submitted.

At 10:03 a.m., the court recessed. At 10:34 a.m., the court reconvened with Blease, Acting Presiding Justice; Davis, Associate Justice; and Morrison, Associate Justice.

C039538 MACKLEY v. WEIS

Cause called. Robert Embers Thompson, argued for appellant. Jeff Stone, argued for respondent. Eric Graves and Timothy N. Will appeared only on behalf of respondent. Cause submitted.

At 10:34 a.m., the court recessed. At 10:47 a.m., the court reconvened with Blease, Acting Presiding Justice; Davis, Associate Justice; and Morrison, Associate Justice.

C037948 THE PEOPLE v. SAIZ

Cause called. Mark Greenberg, court appointed counsel, argued for appellant. Susan J. Orton, Deputy Attorney General, argued for respondent. Cause submitted.

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November 18, 2002, continued

At 11:05 a.m., court recessed. At 2:00 p.m., court reconvened with Blease, Acting Presiding Justice; Morrison, Associate Justice; and Robie, Associate Justice.

C039377 LAWSON et al. v. GARD et al.

Cause called. Terry J. Traktman argued for appellant. Dennis L. Viglione, argued for respondent. Cause submitted.

At 2:20 p.m., the court recessed. At 2:24 p.m., the court reconvened with Blease, Acting Presiding Justice; Callahan, Associate Justice; and Hull, Associate Justice.

C039478 ZISK, Executor, etc. v. ZISK et al.

Cause called. William J. Zisk, In Pro Per argued for and John W. Zisk, In Pro Per, appeared only as appellants. Walter S. Nomura, argued for respondent. Cause submitted.

At 2:45 p.m., the court recessed. At 2:49 p.m., the court reconvened with Callahan, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

**C037535 INSURANCE COMPANY OF THE WEST v. HAIGHT BROWN
& BONESTEEL et al.**

**C038478 INSURANCE COMPANY OF THE WEST v. SCHUERING,
ZIMMERMAN & SCULLY**

Cause called. Thomas H. Sloan argued for appellant and submitted additional citations. Jan T. Chilton argued for respondent, Haight, etc. Marjorie E. Manning argued for respondent Schuering, etc. Cause submitted.

At 2:49 p.m., the court recessed. At 3:21 p.m., the court reconvened with Callahan, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

C038561 JACKSON v. LODI UNIFIED SCHOOL DISTRICT

Cause called. Jesse S. Ortiz III argued for appellant. Domenic D. Spinelli argued for respondent. Cause submitted.

At 3:52 p.m., the court recessed until 9:30 a.m., Tuesday, November 19, 2002

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November 18, 2002, continued

- C039120 PRITCHETT v. AVON PRODUCTS, INC. (Not for Publication)**
The judgment is reversed. We direct the trial court to vacate its order dismissing the complaint and to issue an order overruling the demurrer to the fraud claim. The parties shall bear their own costs on appeal.
 MORRISON, Acting P.J.
We concur: Callahan, J.
 Kolkey, J.
- C038297 COOKSEY v. CALIFORNIA COMMISSION OF TEACHER CREDENTIALING
BY THE COURT:**
 Appellant's petition for rehearing is denied.
 NICHOLSON, Acting P.J.

November 19, 2002

At 9:32 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Scotland, Presiding Justice; Blease, Associate Justice; Nicholson, Associate Justice; and Guzman, Bailiff. Calendar called.

- C039724 ATKINSON et al. v. BOARD OF PROFESSIONAL ENGINEERS AND LAND
SURVEYORS**
Cause called. Kevin Atkinson, In Pro Per waived argument for himself as appellant. Larry R. Danielson, In Pro Per, argued for himself as appellant. Steven M. Kahn, Deputy Attorney General, argued for respondents. Cause submitted.
- At 10:02 a.m., court recessed. At 10:04 a.m., court reconvened with Scotland, Presiding Justice; Blease, Associate Justice; and Hull, Associate Justice.
- C038404 SANCHEZ v. DEPARTMENT OF YOUTH AUTHORITY**
Cause called. Kimball J. P. Sargeant, argued for appellant. David Bass, argued for respondent. Cause submitted.
- At 10:37 a.m., court recessed. At 10:40 a.m., court reconvened with Scotland, Presiding Justice; Sims, Associate Justice; and Callahan, Associate Justice.
- C036202 CALIFORNIA YOUTH AUTHORITY v. STATE PERSONNEL BOARD and
RANDY HENDERSON**
Cause called. Marguerite D. Seabourn argued for appellant. Karen J. Brandt, and Christine Albertine argued for respondent. Ben C. Sybesme appeared only. Cause submitted.

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Nicholson, J.

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November 20, 2002

- C038947 THE PEOPLE v. CALLAN (Not for Publication)**
The judgment is reversed and the matter is remanded for proceedings in accordance with this opinion.
MORRISON, J.
We concur: Blease, Acting P.J.
 Hull, J.
- C039070 THE PEOPLE v. FLEMATE (Not for Publication)**
The judgment is reversed and remanded for resentencing and application of presentence credit solely attributable to those cases.
NICHOLSON, J.
We concur: Blease, Acting P.J.
 Kolkey, J.
- C040542 THE PEOPLE v. ANDERSON (Not for Publication)**
The judgment is affirmed.
ROBIE, J.
We concur: Blease, Acting P.J.
 Callahan, J.
- C038337 BASU v. LEAL et al. (Not for Publication)**
The judgment is affirmed. Leal shall recover costs on appeal.
RAYE, Acting P.J.
We concur: Callahan, J.
 Robie, J.
- C040407 MAFFEI v. SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM (Certified For Publication)**
The judgment is affirmed. (CERTIFIED FOR PUBLICATION)
NICHOLSON, J.
We concur: Sims, Acting P.J.
 Raye, J.

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November 20, 2002, continued

- C038282 CALFARM INSURANCE COMPANY v. TAPEWORM VIDEO DISTRIBUTORS, INC. (Not for Publication)**
The order vacating the judgment of dismissal and the order denying the special motion to strike are affirmed. To the extent Tapeworm appeals from any order other than the order vacating the judgment of dismissal, the appeal is dismissed. CalFarm shall recover its costs on appeal. (Cal. Rules of Court, rule 26 (a)(1).)
ROBIE, J.
We concur: Blease, Acting P.J.
Sims, J.
- C040225 LAFOREST v. CITY OF MOUNT SHASTA and DeCLERCK ENTERPRISES et al. (Not for Publication)**
The judgment is affirmed. The plaintiff shall bear costs on appeal. (Cal. Rules of Court, rule 26 (a).)
ROBIE, J.
We concur: Davis, Acting P.J.
Morrison, J.
- C038747 In re TICHINA S.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. LESLIE H. (Not for Publication)**
The juvenile court's order is affirmed.
MORRISON, J.
We concur: Davis, Acting P.J.
Kolkey, J.
- C041199 In re J.M.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. CHRISTINE P. (Not for Publication)**
The juvenile court's order is affirmed.
KOLKEY, J.
We concur: Sims, Acting P.J.
Nicholson, J.

November 21, 2002

- C037256 THE PEOPLE v. GARCIA (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Callahan, J.
Robie, J.

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November 21, 2002, continued

- C040740 THE PEOPLE v. PIERSON (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Callahan, J.
Robie, J.
- C037901 THE PEOPLE v. BARBER (Not for Publication)**
The judgment is reversed as to counts 1, 12, 13, and 32 and affirmed as to all remaining counts.
CALLAHAN, J.
We concur: Scotland, P.J.
Morrison, J.
- C041599 THE PEOPLE v. WILLIAMS (Not for Publication)**
The judgment is affirmed.
CALLAHAN, J.
We concur: Blease, Acting P.J.
Robie, J.
- C038622 SIERRA CLUB et al. v. SAN JOAQUIN LOCAL AGENCY FORMATION
COMMISSION and GOLD RUSH CITY HOLDING COMPANY, INC. et al.
and CITY OF LATHROP (Not for Publication)**
THE COURT:
The opinion of this court filed on October 28, 2002, in the above entitled case is modified as follows:...As modified, the petition for rehearing is denied. There is no change in the judgment.
The Sierra Club's request for judicial notice supporting the petition for rehearing is denied.
BY THE COURT:
BLEASE. Acting P.J.
MORRISON, J.
HULL, J.
- C039608 METTLER v. SPAETH (Not for Publication)**
As the motions for new trial and judgment notwithstanding the verdict were correctly denied, the judgment is affirmed.
RAYE, Acting P.J.
We concur: Hull, J.
Robie, J.

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November 22, 2002

- C038254 THE PEOPLE v. DAVIS (Not for Publication)**
The judgment is modified to impose \$150 in criminal laboratory analysis fees, \$150 in state penalty assessments, and \$105 in county penalty assessments. As so modified, the judgment is affirmed. The trial court is directed to correct the abstract of judgment as stated above and to forward a certified copy to the Department of Corrections.
KOLKEY, J.
We concur: Sims, Acting P.J.
 Morrison, J.
- C038266 THE PEOPLE v. SALMONS (Not for Publication)**
The judgment is affirmed.
DAVIS, J.
We concur: Sims, Acting P.J.
 Morrison, J.
- C038834 THE PEOPLE v. VIVEROS (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Morrison, J.
 Hull, J.
- C038932 THE PEOPLE v. HUTCHINGS (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
I concur: Davis, Acting P.J.
I concur except as to part VI where I concur in the result.
Robie, J.
- C037535 INSURANCE COMPANY OF THE WEST v. HAIGHT BROWN AND
C038478 BONESTEEL LLP et al. (Not for Publication)**
The judgments are affirmed.
HULL, J.
We concur: Callahan, Acting P.J.
 Robie, J.
- C039852 LETL-REEVES v. ROTHMAN REEVES (Not for Publication)**
The judgment is affirmed. Ellen is awarded her costs on appeal.
(Cal. Rules of Court, rule 26 (a) (1).)
KOLKEY, J.
We concur: Nicholson, Acting P.J.
 Hull, J.

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November 22, 2002, continued

- C040511 HOGAN v. THOMAS (Not for Publication)**
The judgment is affirmed.
HULL, J.
We concur: Scotland, P.J.
Callahan, J.
- C037511 In re CHRISTOPHER T.; THE PEOPLE v. CHRISTOPHER T. (Not for Publication)**
The matter is remanded to the juvenile court to determine whether, at this point, an educational assessment has been afforded the minor. If such an assessment has been made, either by CYA or otherwise, no more need be done; if the educational assessment has not been made, the court is directed to see that the assessment is conducted. In all other respects, the judgment (order committing the minor to the CYA) is affirmed.
MORRISON, J.
We concur: Sims, Acting P.J.
Davis, J.
- C038076 In re JOHN W., Jr.; THE PEOPLE v. JOHN W., Jr.**
BY THE COURT:
Appellant's petition for rehearing is granted. The decision filed on October 25, 2002, is vacated.
SCOTLAND, P.J.
- C040147 In re ANTHONY M.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. WILLIAM P. (Not for Publication)**
The juvenile court's orders are affirmed.
CALLAHAN, J.
We concur: Sims, Acting P.J.
Morrison, J.